

## MINUTES OF THE TOWN BOARD MEETING OF AUGUST 24, 2016

PRESENT:	Supervisor	Edward Fairbrother
	Council	Andy Gillette
		Bob Adams
		Lee Giammichele
	Attorney	Thomas Reilly
	Clerk	Linda Cross
ABSENT:	Council	Mike Saglibene

Supervisor Fairbrother opened the Town Board meeting at 7:00 p.m., and requested those present to participate in the Pledge of Allegiance.

**PUBLIC HEARING 7:00 pm** Tentatively Local Law #4, Amendment to section 17.36.100, of the Town of Big Flats Municipal Code “Recreation Parks, Playground, and Open Space Requirements”

Supervisor Fairbrother called the public hearing to order at 7:01 pm and read the legal notice duly advertised in the Elmira Star Gazette on August 17, 2016, which allowed and considered public comments regarding the Amendment of the Town of Big Flats Municipal Code, section 17.36.100, Recreation Parks, Playground, and Open Space Requirements

IN FAVOR: None  
OPPOSITION: None  
COMMENTS: None

Since there were no further comments, Supervisor Fairbrother closed the Public Hearing at 7:03 p.m.

**CONCERNS OF THE PEOPLE-** None

### MINUTES

Councilperson Gillette made a motion, seconded by Councilperson Giammichele to approve the Town Board minutes of July 27, 2016, as presented. All in favor except Councilperson Saglibene who was absent, motion carried.

Councilperson Gillette made a motion, seconded by Councilperson Giammichele to approve the Town Board minutes of August 10, 2016, as presented. All in favor except Councilperson Saglibene who was absent, motion carried.

### UNFINISHED BUSINESS

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RESOLUTION NO. 207-16

LOCAL LAW #2, SECTION 17.36.100 OF THE TOWN OF BIG FLATS MUNICIPAL CODE  
"RECREATION PARKS, PLAYGROUNDS, AND OPEN SPACE REQUIREMENTS"  
AMENDED

Resolution by: Giammichele

Seconded by: Adams

WHEREAS, Section 17.36.100 of the Town Municipal Code is seriously out of date and not in conformance with Section 274-a (passed in 1992) of the NY Town law and also not in conformance with Baywater Realty & Capital Corp. v Planning Board of the Town of Lewiston, 76 NY2d 460 (1990)) which required that specific findings must be made by a planning board prior to requiring the reservation of parkland or imposition of a fee in lieu thereof and also not in compliance with the following US Supreme Court decisions: Dolan v. City of Tigard, 512 US 374 (1994) and City of Monterey v. Del Monde Dunes at Monterey, Ltd., 526 US 687 (1999), and

WHEREAS it is extremely important that our Code contains the requirement that specific findings must be made by a planning board prior to requiring the reservation of parkland or imposition of a fee in lieu thereof when considering the approval of residential subdivisions, and

WHEREAS, a public hearing regarding this proposed amendment was held August 24, 2016, and

WHEREAS for environmental review, a ministerial act is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5 (c) (19) and as such no further action is necessary regarding the same, and

WHEREAS this proposed local law modifies our code by substituting present section 17.36.100 (A)(1) with the wording below as highlighted and it modifies section 17.336.100(C)(1) as highlighted below and with renumbering or lettering of subdivisions also as highlighted below and makes no changes in the rest of Section 17.36.100, now

THEREFORE, BE IT RESOLVED that the Town Board of the Town of Big Flats hereby adopts the following as an amendment (as highlighted) to Section 17.36.100 of the Municipal Code of the Town of Big Flats effective immediately:

17.36.100 - Recreation parks, playgrounds, and open space requirements.

A. For an alternative dwelling park, PMRD, PUD, or multi-unit dwelling development.

1. Consistent with the Town of Big Flats Comprehensive Plan, a park, playground, and/or open space may be required for an alternative dwelling park, PMRD, any PUD that includes a residential component, or multi-unit dwelling development. Land for a park, playground or other recreational purposes **may not be required** until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town and if such a case exists the site plan shall show a park or parks suitably located therein unless there are no suitable place for a park of adequate size. Such findings shall include an evaluation of the present and anticipated future needs for a park(s) and recreational facilities in the Town based on projected population growth to which the **particular**

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**subdivision plat will contribute.** The required park, playground, and/or open space shall meet the following minimum requirements:

- a. Such land shall be either held in private or corporate ownership, maintained in perpetuity by an established organization, or deeded to the town.
- b. The location of such land on a lot shall be determined with the following considerations:
  - i. Maximizing the safety of residents walking or bicycling between such facilities and their homes;
  - ii. Providing for safe traffic circulation and parking at the park, playground, and/or open space site;
  - iii. Minimizing the interaction between traffic to and from the principal use of the lot and the traffic to and from the park, playground, and/or open space site(s) on the lot;
  - iv. The suitability of the park, playground, and/or open space site and its location for the intended recreational purpose.

2. A preliminary subdivision plat or site plan shall include the following minimum details regarding a park, playground, and/or open space:

- a. A dimensional drawing showing boundaries of the park, playground, and/or open space, its size in square feet, the location, and a description of any equipment to be installed or buildings to be constructed in the park, playground, and/or open space;
- b. A maintenance plan for the area;
- c. A detailed description of future ownership of the land for the park, playground, and/or open space or a deed offering dedication of such land to the town;
- d. The details of the plan shall show how the entire area is to be graded, drained, and landscaped to make it a useful and attractive feature of the development.

### B. Park and/or Playground Area Requirements.

1. In an alternative dwelling park and multi-unit dwelling development: A minimum of nine hundred (900) square feet per dwelling unit.
2. In a PMRD: As prescribed in Chapter 17.20.
3. In a PUD: As prescribed in Chapter 17.21

### C. Alternative for a Park, Playground, and Open Space Requirement.

1. In the event the planning board makes a finding pursuant to paragraph A(1) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the planning board may require a sum of money in lieu thereof to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a reserve fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

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2. When it is determined by the planning board that in an alternative dwelling park, multi-unit dwelling development, PUD, or PMRD, a park and/or playground is not practical due to the size, shape and/or the character of the development and the site plan shall be:

- a. Referred to the town's park commission for review and report to the planning board regarding any public park and/or playground resource likely to be impacted and the effect the development may have on such public resource:
- b. Referred to the town assessor who shall make a report to the planning board with a cost estimate of the per square foot value of the land being considered for an alternative dwelling park, multi-unit dwelling development, PUD, or PMRD based on current assessment data.

3. The information provided in the report received in accordance with subsection (C)(1) of this section shall be utilized by the planning board to validate any impact associated with an alternative dwelling park, multi-unit dwelling development, PUD, or PMRD on an existing public park and/or playground resource and to calculate a payment in lieu of park and/or playground land.

4. To calculate a required payment in lieu of park and/or playground land, multiply the required area in square feet of park and/or playground required in subsection B of this section times the per square foot value of the land as determined by the Assessor in subsection (C)(2)(b) of this section.

5. The above information shall be submitted to the Town Board for it to pass a resolution setting forth the sum to be collected.

6. When the provisions of subsection C of this section are invoked, the payment in lieu of park and/or playground land shall be made to the town prior to an approval of a preliminary subdivision plat or site plan.

7. If the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved previously (See Section 276 of the NY Town Law), the planning board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of re-subdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

### D. Open Space in All Development Areas.

1. On a lot proposed for a development that requires a subdivision approval or site plan in accordance with Section 17.12.010 that are determined to be of importance to the community based on their environmental setting, scenic view, historical, or archeological significance may be set aside and not be developed as a condition of subdivision or site plan approval. Such a determination shall depend upon the magnitude and character of the development and the potential that the environmental setting, scenic view, historical, or archeological site would be irreparably lost if not preserved.

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2. The planning board may consider these areas, when reserved for recreation purposes, in lieu of any portion of a park and/or playground required in subsections A through D of this section.
3. Lands proposed for open space purposes shall be either held in private or corporate ownership and maintained in perpetuity by an established organization or may be deeded to the town. The ownership of such land shall be determined in consideration of the following:
  - a. The severity of the constraints and the impact these constraints have on the potential for further development of a lot;
  - b. The importance of the land area to the town and the persons using the development;
  - c. The lands scenic quality, potential for wildlife habitat, and the potential for protecting adjacent properties from any potential adverse impact that may result from development of the area of an open space;
  - d. The likelihood that residents in the development and/or the town would utilize and/or benefit from the set aside of such land.
4. When it is determined by the planning board that open space is required, a detailed plan shall be provided with a preliminary subdivision plat or site plan for the open space and at minimum include:
  - a. A dimensional drawing showing boundaries of the open space;
  - b. A maintenance plan for the open space area;
  - c. Either a detailed description of future ownership of the land or a deed offering dedication of such land to the town;
  - d. A description of any improvements planned for the land.

LL2-16, 8/24/16

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother  
NAYS: None ABSENT: Saglibene

### NEW BUSINESS

#### RESOLUTION NO. 208-16

#### ABSTRACT OF AUDITED VOUCHERS FOR AUGUST 24, 2016 APPROVED

Resolution by: Adams

Seconded by: Gillette

RESOLVE that the Town of Big Flats approve the Abstract of Audited Vouchers for August 24, 2016, and order the bills paid, when in funds, for the following:

GENERAL FUND	\$ 25,685.76
HIGHWAY FUND	\$ 6,161.14
WATER DISTRICT #4	\$ 601.59
WATER DISTRICT #5	\$ 3,267.58
LIGHTING DISTRICT	\$ 518.41

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother  
NAYS: None ABSENT: Saglibene

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RESOLUTION NO. 209-16

WEAVER / WARD TIMBER HARVEST PERMIT, PROPERTIES OWNED BY DANIEL S. WEAVER, 32 CROSS CREEK DRIVE, BIG FLATS, NY 14814, #56.00-1-62.1, AND BRIAN WARD, 36 CROSS CREEK DRIVE, BIG FLATS, NY 14814 #56.00-1-62.2 APPROVED

Resolution by: Gillette

Seconded by: Giammichele

WHEREAS a Timber Harvesting Application has been received from CF Cutting LLC (Justin Clark) at 106 Eachers Hollow Rd. Horseheads, NY 14845 to harvest a total of 17 acres to include a selective cut of timbers with diameters no less than 16", and

WHEREAS the Town Board finds this action to be an Unlisted Action under SEQRA and to have no significant effect on the environment based on the following facts:

1. The timber harvesting will begin between August 25, 2016 to September 25, 2016;
2. All roads will be graded and water bars installed at completion
3. The landing areas and all skid roads will be smoothed and free of debris, also the landing and skid roads will be seeded with a conservation mix after the harvest is complete; now

BE IT THERE FOR RESOLVED, the application for a timber harvesting permit submitted by CF Cutting LLC, is approved as follows:

1. The logging operation, as proposed, will involve trucks using Reasor Hollow Road to Owen Hollow Rd to I86. Trucks hauling logs will be required to display a valid safety inspection sticker on the windshield;
2. The transport of logs may only occur between the hours of 9:00am to 7:00pm daily with the exception that on days' public schools are in session the transport of logs may not occur between the hours of 1:30 and 4:30pm.
3. All roads shall be kept free of dust and debris created by the logging operation. The roadway will be inspected and cleaned by the logger on a daily basis as needed and must be cleaned when required by the Code Enforcement Officer as a result of any inspections.

**Prior to Obtaining Permit**

4. A performance guarantees in the form of a certified check for \$510.00 must be posted with the Code Enforcement Office before any timber harvesting may begin. The performance guarantee will be returned upon the satisfactory completion of all logging operations, compliance with conditions of this resolution, and a final inspection of the timber harvesting site by the Code Enforcement Officer, and a representative from Chemung County Soil and Water Conservation Service, if deemed necessary.
5. An approved Driveway/Curb-Cut and/or Road Permit must be obtained from the Town of Big Flats Department of Public Works **prior** to any transferring of heavy equipment or harvest lumber/materials.

**Prior to any Logging Operations**

6. Proof of Vehicle, General Liability, and Workers Compensation Insurance with minimum liability coverage for personal injury or death of \$1,000,000 and for property damage of \$250,000 for logging operations, unless authorized by the Town Board and

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the Town Attorney. The Town of Big Flats must be listed as an additional insured and said proof must be filed with the Code Enforcement Office at least 48 hours before commencing any logging operations. Said proof of insurance must be approved by the Town Attorney prior to commencement of work.

7. Notification, in the form of a letter and a copy of the map showing the approved logging area must be provided to all abutters.

### **During Harvesting Activity**

1. The logger shall notify the Code Enforcement Officer within five days of completion to Coordinate onsite inspections.
2. The logging site shall be subject to periodic inspections by the Code Enforcement Officer, and Chemung County Soil & Water Conservation Service Representatives at any time during the course of the operation. These inspections will be done between 10:00am and 4:00pm.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother

NAYS: None

ABSENT: Saglibene

### RESOLUTION NO. 210-16

LEASE FOR THE PITNEY BOWES MAIL MACHINE AND SCALE "SENDPRO P1000  
SERIES FOR 60 MONTHS APPROVED

Resolution by: Giammichele

Seconded by: Adams

WHEREAS the current term of the lease for the mail machine and scale is about to expire, and

WHEREAS three quotes were obtained from Pitney Bowes, and two quotes from Lineage, regarding Postage machines, with scale, and

WHEREAS proposals were discussed with Pitney Bowes and Postage Plus for the lease of a new mail machine and scale, including Meter Rental, Installation, Training, Maintenance and Rate Updates, and

WHEREAS the administration process is a Type 2 action for the purposes of SEQRA and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board authorizes the Town Supervisor to sign the lease for the Pitney Bowes Postage Machine, "SendPro P1000 Series" with 5lb. Scale Platform/Stand Postage Meter at a cost of \$267.93 per month National Joint Powers Alliance Agreement for 60 months.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother

NAYS: None

ABSENT: Saglibene



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RESOLUTION NO. 211-16  
COMMUNICATION LOG FOR AUGUST 24, 2016 APPROVED

Resolution by: Adams

Seconded by: Gillette

BE IT RESOLVED that the following communications were received, accepted and filed by the Town Clerk of the Town of Big Flats and referred to the appropriate Department Head for information and/or action:

August 17, 2016

Charter Communications– RE: August 17, 2016 Programming Notice Changes. *Referred to: Town Board, and filed with Town Clerk*

August 18, 2016

Big Flats Library Advocates RE: Thank you for the help and support with the 2016 Big Flats Garden Tour. *Referred to: Town Board, and filed with Town Clerk*

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother

NAYS: None

ABSENT: Saglibene

RESOLUTION NO. 212-16  
REQUESTING CHEMUNG COUNTY/CITY OF ELMIRA REGIONAL COMMISSION  
ALLOW THE TOWN TO HAVE A SECOND POSITION UNDER THE TITLE OF CLERK  
TO THE TOWN JUSTICE APPROVED

Resolution by: Gillette

Seconded by: Giammichele

WHEREAS, the Town Justices have requested that the Town of Big Flats allow the Town Court to have two employees under the Civil Service Classification of Clerk to the Town Justice, with one being assigned as the Town Justices need, and

WHEREAS, the Town of Big Flats has two Town Justices with a large caseload, and

WHEREAS, the Town has been advised by the Chemung County/ City of Elmira Regional Civil Service Commission that only one such position of Clerk to the Town Justice is allowed in a Town unless specifically permitted by Civil Service Commission, and that the Civil Service Commission must conduct a Public Hearing before allowing the creation of the second position under the title of Clerk to the Town Justice, and

WHEREAS for environmental purposes, administration is a Type II action in accordance with EQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Big Flats does hereby request that the Chemung County/ City of Elmira Regional Civil Service Commission authorize



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RESOLUTION NO. 212-16, REQUESTING CHEMUNG COUNTY/CITY OF ELMIRA REGIONAL COMMISSION ALLOW THE TOWN TO HAVE A SECOND POSITION UNDER THE TITLE OF CLERK TO THE TOWN JUSTICE APPROVED continued

the Town of Big Flats to have two positions under the title of Clerk to the Town Justice, and to request that Chemung County/ City of Elmira Civil Service undertake the steps necessary for the Town of Big Flats to have two Clerks to the Town Justice.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother  
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 213-16  
SALARY CHANGE OF BUILDING INSPECTOR/ CODE ENFORCEMENT OFFICER  
THOMAS WHISPel APPROVED

Resolution by: Gimmichele  
Seconded by: Adams

WHEREAS the Town Supervisor has done a review of the salary for this position with the extension of duties and responsibilities, and

WHEREAS the Town Supervisor has reviewed the additional new duties assigned to Thomas Whispel, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

THEREFORE, BE IT RESOLVED that the Town Board approves the following change in Building Inspector/CEO, Code Enforcement Officer Thomas Whispel's annual salary based on the new duties and responsibilities placed on his position retroactive to August 1, 2016 from \$44,908 to \$50,000.

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother  
NAYS: None ABSENT: Saglibene

RESOLUTION NO. 214-16  
APPLY FOR A GRANT TO REHABILITATE THE BRIDGE ON DANIEL ZENKER DRIVE  
OVER OWEN HOLLOW CREEK APPROVED

Resolution by: Adams  
Seconded by: Gillette

WHEREAS, the bridge on Daniel Zenker Drive over Owen Hollow Creek condition rating has dropped to 4.98 rating, and

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RESOLUTION NO. 214-16, APPLY FOR A GRANT TO REHABILITATE THE BRIDGE ON DANIEL ZENKER DRIVE OVER OWEN HOLLOW CREEK APPROVED continued

WHEREAS, this bridge was never accepted by Chemung County and remains the responsibility of the Town of Big Flats, and

WHEREAS, there is a grant to rehabilitate bridges at a cost of \$1,084,923.84, with the Town of Big Flats share to be \$54,246.50, and

WHEREAS, the County of Chemung would then take ownership of the bridge, and

WHEREAS for environmental purposes the administration of the Town personnel is a Type II action in accordance with SEQRA 6, NYCCR Part 617.5(c) (20) and as such no further action is required regarding the same, and

THEREFORE, BE IT RESOLVED, the Town Board authorizes the Commissioner of Public Works to apply for the grant to rehabilitate the Owen Hollow Creek on Daniel Zenker Drive

CARRIED: AYES: Gillette, Giammichele, Adams, Fairbrother

NAYS: None

ABSENT: Saglibene

**Supervisor Fairbrother also reports on:**

- 2017 Budget
- New Hospital plan better coverage, and cost less
- Planning department and code update / will be advertising for a part-time person
- Bonding Water Dist#3 loop
- Assessing moving to Horseheads September 1<sup>st</sup>, shared service
- GST drainage projects completed/ future projects (Sing Sing)
- Concerts by Kevin Cole in the park, Thursday, August 25<sup>th</sup> last night
- Little League contract, set up a meeting with Chris Austin
- Water pump station update – Up and running, Ribbon Cutting in September, applied for Grants to refund
- Update on accounting program – very impressed with
  - Supervisor Fairbrother set up a meeting date with the Board to look over the Accounting Program. Wednesday, August 31<sup>st</sup> at 4:30
- Parking at Tags – Boy Scouts Group helped with the concert of the 21<sup>st</sup> of August
- PA system at Community Center installed, thanks to Chris Austin, and Jay Goodwin
- Attorney will be on vacation starting Thursday
- Supervisor on vacation Labor day week
- Historical Society meeting will be Thursday, Oct.27<sup>th</sup> at the community Center

Councilperson Adams made a motion, seconded by Councilperson Giammichele to adjourn the Town Board meeting at 8:06 p.m. All in favor except Councilperson Saglibene who was absent, motion carried.

Date approved: \_\_\_\_\_ Linda Cross  
Town Clerk